

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DOROTHY NEWLAND,

Plaintiff,

v.

No. 2:23-cv-488 MV/KRS

OSCAR GARCIA and
BLAZIN WINGS, INC.,
doing business as Buffalo Wild Wings,

Defendants.

**ORDER GRANTING MOTION TO FILE FIRST AMENDED COMPLAINT
AND ORDER TO SHOW CAUSE**

THIS MATTER is before the Court on Plaintiff's Motion for Leave to File First Amended Complaint to Add an Essential Party and Comply with Federal Pleading Standard, filed July 21, 2023. (Doc. 11). Defendant filed a response to the Motion to Amend on August 11, 2023, and Plaintiff filed a reply on September 5, 2023. (Docs. 16, 26). On September 19, 2023, the presiding judge referred Plaintiff's Motion to Amend to the undersigned to hear and determine under 28 U.S.C. § 636(b)(1)(A) and Rule 72(a) of the Federal Rules of Civil Procedure. (Doc. 30).

Plaintiff seeks to amend her complaint to add Mark House as a defendant because Mr. House was the manager on duty at the time of the incident underlying this lawsuit. (Doc. 11) at 1. Plaintiff notes that this case was removed on the basis of diversity jurisdiction, so adding Mr. House as a defendant would destroy the Court's subject matter jurisdiction because Plaintiff and Mr. House are citizens of the State of New Mexico. *Id.* at 2. Nevertheless, Plaintiff alleges that Mr. House is an essential party and her Motion to Amend was timely filed shortly after she learned he was the manager on duty. *Id.* at 3-4.

While Defendants initially opposed Plaintiff's Motion to Amend (*see* Doc. 16, Response in opposition to Motion to Amend), on November 2, 2023, Defendants filed a Notice of Withdrawal of Defendants' Response to Plaintiff's Motion for Leave to File First Amended Complaint. (Doc. 33). Considering the Motion to Amend is now unopposed, the Court finds the Motion is well-taken and should be granted.

Defendants removed this case to federal court on the basis of diversity jurisdiction. (Doc. 1) at 2. Under 28 U.S.C. § 1332(a), federal courts have "original jurisdiction in all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States." A federal court's jurisdiction must clearly appear from the face of a complaint" *Whitlock v. Leatherman*, 460 F.2d 507, 514 (10th Cir. 1972). Because the addition of Mr. House affects the Court's jurisdiction, the Court will order Plaintiff to show cause why this case should not be remanded to state court.

IT IS THEREFORE ORDERED that Plaintiff's Motion for Leave to File First Amended Complaint to Add an Essential Party and Comply with Federal Pleading Standard, (Doc. 11), is GRANTED. Plaintiff shall file the Amended Complaint attached at Doc. 11-1 **no later than November 15, 2023**.

IT IS FURTHER ORDERED that **no later than November 22, 2023**, Plaintiff shall file a notice with the Court showing cause why the Court should not remand this case to state court. Defendants may file a response to Plaintiff's notice **by November 27, 2023**.

IT IS SO ORDERED.



KEVIN R. SWEAZEA
UNITED STATES MAGISTRATE JUDGE